

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**DARRELL PRIDY, GREGORY NABORS,
MICHAEL SANDERS, and RANDALL
ABSTON, on behalf of themselves and all
others similarly situated,**

AND

**LOCAL UNION 702 OF THE UNITED
ASSOCIATION OF JOURNEYMEN
AND APPRENTICES OF THE PLUMBING
AND PIPEFITTING INDUSTRIES,**

Plaintiffs,

v.

**PIEDMONT NATURAL GAS COMPANY,
INC.**

AND

**DUKE ENERGY CORPORATION,
as the alter ego or successor in liability to
PIEDMONT NATURAL GAS COMPANY,
INC.**

Defendants.

**No. 3:19-cv-00468
District Judge Aleta A. Trauger**

**CLASS ACTION
JURY DEMAND**

MOTION TO DISMISS

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Piedmont Natural Gas Company, Inc. (“Piedmont Gas”) and Duke Energy Corporation (“Duke Energy”) move the Court to dismiss the Second Amended Complaint asserted by Plaintiffs Local Union 702 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industries (the “Union”) and Darrell Pridy, Gregory Nabors, Michael Sanders, and Randall Abston (collectively, the “Individual Plaintiffs”).

As explained more fully in Defendants' Memorandum of Law, the Second Amended Complaint fails for at least four fundamental reasons. First, Duke Energy is not a proper party to this action: Duke Energy is the corporate parent of Piedmont Gas, not its successor in liability and not its alter ego. Duke Energy has never employed Piedmont Gas' employees or entered into any collective bargaining agreement with the Union. Second, neither the Union's breach of contract claim nor the Individual Plaintiffs' claim under the Employee Retirement Income Security Act of 1974 ("ERISA") have been raised through the proper grievance and arbitration procedure provided by the collective bargaining agreement, and Plaintiffs cannot bring suit without first exhausting their internal contractual remedies. Third, the Individual Plaintiffs' ERISA claim fails because the program at issue was a "payroll practice," not an ERISA-governed welfare plan, and in any event the "benefits" were not vested. Fourth, the Individual Plaintiffs' age discrimination claim is completely preempted by Section 301 of the Labor Management Relations Act ("LMRA"), such that the Tennessee Human Rights Act ("THRA") does not apply. For each of these reasons, the Second Amended Complaint fails to state a claim upon which relief can be granted, and should accordingly be dismissed.

In support of this Motion, Defendants rely upon its contemporaneously filed Memorandum of Law.

s/ Paul S. Davidson

Paul S. Davidson (TN BPR# 011789)

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Certificate of Service

I certify that a true and correct copy of the foregoing was served *via* the Court's CM/ECF system upon:

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on January 13, 2020.

/s/ Paul S. Davidson

Paul S. Davidson